

The Honorable James L. Robart

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

OLD REPUBLIC TITLE, LTD.,

Plaintiff,

v.

TROY X. KELLEY and DIANE
DUFFRIN KELLEY, individually and as
a marital community,

Defendants.

No. 10-cv-0038-JLR

**DECLARATION OF CARLETON
LAGO IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PARTIAL SUMMARY JUDGMENT**

**NOTE ON MOTION CALENDAR:
FEBRUARY 11, 2011**

ORAL ARGUMENT REQUESTED

I, Carleton Lago, declare as follows:

1. I was the Senior Vice President of Old Republic who negotiated and executed the reconveyance service agreement with Troy Kelley in 2006. I am authorized to make this declaration on its behalf, and have personal knowledge of and am competent to testify about the matters set forth in this declaration.

2. I met Troy Kelley in Old Republic's Lynnwood, WA, office on April 10, 2006, to discuss doing business together. Two other Old Republic employees were present, Janet Summers and Sandra Lamar. I took notes at the meeting. Exhibit A are a true and accurate copy of my notes. The notes read, in part, "Fee paid to PCD will be 20.00. Fee includes management of funds from trustee and

1 refunds to ORT escrow principal. No separate fee to write refund check to ORT
2 escrow principal.”

3 3. There were a small number of written communications with PCD (all
4 with Troy Kelley) before the agreement was signed the following month. I attach
5 true and correct copies of all of these communications as Exhibits B-1 to B-4.

6 4. The day after our April 10 meeting, Troy Kelley sent me an email
7 with a draft version of a refund letter that would be sent to Old Republic Title’s
8 customers on PCD letterhead. Exhibit B-1.

9 5. On April 13, Kelley emailed me a template agreement. Exhibit B-2.
10 His cover email confirmed, “I have priced the tracking and refund service at \$20
11 per TD.” “TD” is an abbreviation for “trust deed,” more commonly known as a
12 “deed of trust.”

13 6. Later that same day, Kelley sent me another email with some more
14 forms he used. Exhibit B-3.

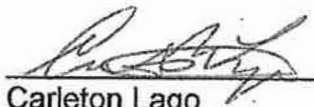
15 7. I sent Kelley a marked-up version of his template agreement.
16 Exhibit B-4. I don’t have a cover email or letter so am not sure how this was
17 transmitted to Kelley, but he accepted all of Old Republic’s requested changes
18 and, on May 4 and 6, we signed the final version of the agreement, a true and
19 correct copy of which is attached as Exhibit C (which includes the email and fax
20 cover sheet forwarding the signed agreement to Kelley).

21 8. As we discussed on April 10 (see Ex. A) and as set forth in the
22 agreement (Ex. C), Kelley’s only fee was a flat fee of \$20/reconveyance. We
23 never discussed, let alone agreed to, payment of a higher fee.

24 9. Our agreement was never amended or revised.

25 I declare under penalty of perjury under the laws of the State of
26 Washington that the foregoing is true and correct.

1 Executed this 22nd day of January, 2011, in MOUNT VERNON, WASHINGTON, California:

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4 Carleton Lago
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DECLARATION OF CARL LAGO IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT (No. 10-cv-0038-JLR) - 3

4845-4011-9048.01

Riddell Williams P.S.
1001 FOURTH AVENUE
SUITE 4500
SEATTLE, WA 98154-1192
206.624.3600

CERTIFICATE OF SERVICE

I, Melodi Downs, state as follows:

I am over 18 years of age and a citizen of the United States. I am employed as an executive assistant by the law firm of Riddell Williams P.S.

On the date noted below I electronically filed the foregoing document titled **DECLARATION OF CARLETON LAGO IN SUPPORT OF PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT** using the CM/ECF system and caused to be delivered true and accurate copies of the same via the CM/ECF system which will send notification of such filing to:

Judy A. Endejan, WSBA #11016
David C. Lundsgaard, WSBA #25448
GRAHAM & DUNN PC
Pier 70 – 2801 Alaskan Way, Ste. 300
Seattle, WA 98121-1128
Email: jendejan@grahamdunn.com
dlundsgaard@grahamdunn.com

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct and that this Certificate of Service was executed on this 20th day of January, 2011, at Seattle, Washington.



Melodi Downs

Exhibit A

4-10-06 @ 10:00 AM

MEETING at Lynwood, WA OBT OFFICE

Tracy Kelly, PCO, Sharon L. MARR, OBT.

THANOT SCUMMER OBT, CARL LAGO OBT

Discussed with Tracy the services that
PCO will provide to OBT.

Funds paid to OBT Escrow Payments
will be held by PCO in separate trust
acct by PCO. Only funds from OBT
Escrow will be deposited in the acct.

Fee paid to PCO will be 20%
fee includes majority of funds from trustee
& Refers to OBT Escrow Payment.
No separate fee to write up while
to OBT Escrow Payments.

Mobil Home TITLE Escrow will not
be done by PCO. Tracy to give us
names of escrowers on papers that will
be done.

Tracy to find CL draft of contract.
Effort date 6/1/06.

93
Page
10-10

93-1
ORTK00019

Exhibit B₁

Carl Lago

From: Troy Kelley [tkelley@propertyclose.com]
Sent: Tuesday, April 11, 2006 3:43 PM
To: Carl Lago
Cc: Sandra Lamar
Subject: Thank you

Attachments: 2341353392-Refund Letter ORI.doc



Refund Letter
ORI.doc (412 KB)...

Carl,

Thank you for meeting with me yesterday.

I have enclosed one version of our refund letter.

This version is on our letterhead. Some clients prefer we mail it out on their letterhead. Also, this particular client wanted to hit the issue of the refund and integrity extra hard in the letter.

Within the next two days, I will email you our follow-up letter that we send to institutional lenders and any other letters that are relevant. As always, we are flexible in the wording and will defer to your preferences. You and Sandra will view all template letters from which any of our outgoing correspondence is based on.

Please call or email me with any follow-up questions or concerns. I will get you an answer immediately as my company place a premium on responsiveness.

I hope you entrust this part of your business to us.

I understand that my company is an extension of your company if you select us to service your account. As Abe Lincoln (& others) once said, all we have are our reputations.

Thank you,

Troy Kelley
office: 888-210-2607
fax: 888-210-2613
cell: 253-906-4376



April 11, 2006

«first_name» «last_name»
«street»
«city» «zip»

Re: Escrow No. «esc»

Dear <<esc>>:

At Old Republic Title Company integrity is a very important part of our value system. One of our responsibilities in the closing of your transaction is to make sure that your trust deed (mortgage) is properly reconveyed (satisfied). A reconveyance document is recorded when a trust deed has been paid in full; therefore clearing the title to your property from that debt.

To ensure that the reconveyance is done properly, Old Republic collects a Post Closing fee for each reconveyance. A portion of this fee is charged to track county records for your reconveyance and the balance is charged so that Old Republic or another trustee can process your reconveyance if additional are needed. In your case, the county records show the reconveyance document has been recorded, so we can close our file and we are refunding you the excess processing fee.

Thank you very much for using Old Republic. We appreciate your business and hope that returning excess funds shows you how much we value you as a customer and how much we value our integrity. If you have any questions regarding this matter please contact me in the Post Closing Department at 888-210-2607 and I will be happy to assist you.

Sincerely,

Megan Goldstein
Post Closing Coordinator

The Post Closing Dept • 2521 Fremont Street • Tacoma, WA 98406
Phone (888) 210-2607 • Fax (888) 210-2613

ORTK000177

Exhibit B₂

Carl Lago

From: Troy Kelley [tkelley@propertyclose.com]
Sent: Thursday, April 13, 2006 10:40 PM
To: Carl Lago
Subject: Agreement

Attachments: 4039382131-PCD Agreement Old Republic.doc



PCD Agreement Old
Republic.doc...

Carl,

I have attached our reconveyance service agreement.

It really is more of an agreement that spells out our services to our client, instead of a contract since you may cancel with 30 days notice and not send us any orders during those 30 days. As Sandra has done, please free feel to call our clients, I think they will speak highly of our company.

Thank you for the opportunity to make a proposal to you. I have priced the tracking and refund service at \$20 per TD, but as these are uncharted waters so please feel free to call me to discuss the issue. If either of us believes pricing is out of whack after six months, I think we should revisit the issue to make sure that both of us are comfortable.

Troy Kelley
office: 888-210-2607
cell: 253-906-4376



**THE POST CLOSING DEPARTMENT
AGREEMENT FOR POST CLOSING SERVICES**

Client: Old Republic Title, Ltd., dba, Old Republic Title and Escrow, Ltd and Issaquah Escrow, Inc.

Description of Services:

The Post Closing Department (hereinafter known as PCD)

The PCD agrees to receive, track, and prepare all reconveyances and satisfaction of mortgages from both escrow and title. PCD will follow-up in writing and on the telephone with outside trustees that have not recorded reconveyances within the time period mandated by state statutes. PCD agrees to assist client with all their post closing needs.

Client may begin to forward all post closing documents and phone calls concerning post closing to the post-closing desk/department. PCD will review all post closing documents for accuracy and correctness. If documents are incomplete or incorrect, PCD will correct and/or complete the document(s) within the parameters specified by client.

PCD shall complete all documents in a timely manner and in accordance with state statutes. And with the client's best interest in mind, PCD will always try to prepare and execute a substitution of trustee when said client is not listed as trustee on original recorded Deed of Trust. PCD shall comply with all state statutes concerning post-closing material. PCD under no circumstances shall be required to bring legal action against any parties of interest.

Previous Services: Follow-up

If client has had a previous reconveyance service or outside vendor offering post-closing services, PCD shall audit previous years tracking and processing. If in the event PCD recovers money owed to client, client agrees to pay PCD 10% of recovered funds.

Optional: Initial here for service _____

PCD Privacy Notice

PCD shall not release any information provided to its company or its employees to any third party unless in direct relationship to providing client with a completed reconveyance. PCD shall hold all information obtained from client in the strictest confidentiality.

Start Date: June 1, 2006

Fees are as follows:

\$20.00 post closing tracking fee per item,
fee includes management of funds due trustees & client refunds

\$5.00 reconveyance preparation (trustee only) where Old Republic Title instructs PCD to prepare trustee
file where Old Republic Title is trustee Initial here for service _____

Payment Terms:

Client shall collect post-closing fee at closing and forward check to PCD. PCD will provide client with a monthly report of services.

This agreement shall be good for six months and shall renew automatically. Client can however, with 30 days written notice, discontinue agreement at anytime. If after discontinuing service client would like assistance from The Post Closing Department to continue the tracking and processing methods and procedures put in place by The Post Closing Department, client may request consultation.

Additional Terms and Conditions:

Old Republic Title, Ltd.

By: _____
Carleton R. Lago
Senior Vice President and Secretary
Old Republic Title

Date

Phone: 800-325-7711
Fax: 925-938-0404

The Post Closing Department

By: _____
Troy X. Kelley
President
The Post Closing Department
2521 Fremont Street
Tacoma, WA 98406
Phone: 888-210-2607 / Fax: 888-210-2613
Email: tkelley@propertyclose.com

Date

Exhibit B₃

Carl Lago

From: Troy Kelley [tkelley@propertyclose.com]
Sent: Thursday, April 13, 2006 11:06 PM
To: Carl Lago
Cc: Sandra Lamar
Subject: Forms

Attachments: 573264412-30 Day Request Letter.doc; 1024225257-Indemnity Letter b.doc



30 Day Request
Letter.doc (42 ...



Indemnity Letter
b.doc (413 KB...

Carl,

I have attached two general forms PCD uses. The first is our 30 day lender follow-up and I think it demonstrates the type of language PCD uses. Lenders are large clients of title companies. The second is an indemnity issued by PCD and accepted by title companies and it reflects that in most cases, PCD issues the indemnity and it will be accepted, which means you are not signing on Old Republic letterhead (time & liability) even if an outside vendor prepares the work for you.

Our language and procedures are shaped by you the client. I look forward to drafting our outside communication templates for your approval, if we are fortunate enough to have the opportunity to work for you. Please call or email me with any questions.

Thank you.

Troy Kelley
888-210-2607



Fidelity National Title Company of Oregon

Date:

Escrow No.:

Borrower:

Address:

To:

To Whom It May Concern:

Enclosed you will find:

- Prepared Lost Note and Trust Deed Affidavit
- Prepared Substitution of Trustee and Full Reconveyance
- Self-addressed, stamped envelope

Please sign and notarize the enclosed documents where indicated and return to my attention so that I may release the associated lien as soon as possible. In the event that you have any questions or concerns, please contact me at the number below. Thank you for your time and efforts.

Thank you,

April Cordaro
Reconveyance Operations Manager

800 Willamette Street • Suite 500 • Eugene, OR 97401
P.O. Box 10827 • Eugene, OR 97440-2827
(541) 683-5422 • Fax (541) 683-5437



Post Closing Department
15 Oregon Ave., Ste. 307
Tacoma, WA 98409
Ph # 888-210-2607

January 4, 2005

Stewart Title # 2003-3206(Lynnwood)
Post Closing Dept. File # I2508 (indemnity)

INDEMNITY AGREEMENT

The Post Closing Department agrees to indemnify and hold harmless Pacific Northwest Title Company from any loss that may occur from the said Deed of Trusts:

Document # 200208300232
Recorded: August 30, 2002
Paid off: February 28, 2004
Beneficiary: RBMG, Inc.
Trustee: Stewart Title
Grantor: Severich/Torricono

The Post Closing Department states that the above-referenced Deed of Trust has been paid off in full, and that the reconveyance is being processed.

Sincerely,

Sharron Airey
Post Closing Department Manager

Exhibit B₄



THE POST CLOSING DEPARTMENT AGREEMENT FOR POST CLOSING SERVICES

Client: Old Republic Title, Ltd., dba, Old Republic Title and Escrow, Ltd and Issaquah Escrow, Inc.

Description of Services:

The Post Closing Department (hereinafter known as PCD)

FILES. AND OBTAIN
The PCD agrees to receive, track, and prepare all reconveyances and satisfaction of mortgages from both escrow and title. PCD will follow-up in writing and on the telephone with outside trustees that have not recorded reconveyances within the time period mandated by state statutes. PCD agrees to assist client with all their post closing needs.

Client may begin to forward all post closing documents and phone calls concerning post closing to the post-closing desk/department. PCD will review all post closing documents for accuracy and correctness. If documents are incomplete or incorrect, PCD will correct and/or complete the document(s) within the parameters specified by client. "POST CLOSING DOCUMENTS" SHALL MEAN BY WAY OF

PCD SHALL ALSO WORK DILIGENTLY
PCD shall complete all documents in a timely manner and in accordance with state statutes. And with the client's best interest in mind, PCD will always try to prepare and execute a substitution of trustee when said client is not listed as trustee on original recorded Deed of Trust. PCD shall comply with all state statutes concerning post-closing material. PCD under no circumstances shall be required to bring legal action against any parties of interest.

Previous Services: Follow-up

If client has had a previous reconveyance service or outside vendor offering post-closing services, PCD shall audit previous years tracking and processing. If in the event PCD recovers money owed to client, client agrees to pay PCD 10% of recovered funds.

Optional: Initial here for service _____

PCD Privacy Notice
AGREES THAT IT

COLLECT, DISSEMINATE OR
DERIVED FROM CLIENTS ESCROW FILES AND/OR
OR USE SAID
PCD shall not release any information provided to its company or its employees to any third party unless in direct relationship to providing client with a completed reconveyance. PCD shall hold all information obtained from client in the strictest confidentiality. AND AGREES TO SHRED ANY DOCUMENTS COLLECTED OR RECEIVED FROM CLIENTS ESCROW FILES WITHIN ONE YEAR OF THE COMPLETION OF THE RECONVEYANCES RELATED TO SUCH FILES.

Something Like This:

→ ~~I TRUSTEE WE CAN BE GENERIC AND USE A "NECESSARY
TO OBTAIN RECORDS OF FULL AND PARTIAL RECONVEYANCES AND
RELEASES OF MORTGAGES THAT CURRENT DIRECTS PCO TO OBTAIN."~~

— EXAMPLE BUT NOT LIMITATION DRED OF FULL and PARTIAL
RECONVEYANCES, RELEASES OF MORTGAGES and INSTRUCTIONS
and/or TRANSMITTALS EXECUTED BY PRINCIPLES DIRECTING
PCO TO OBTAIN SUCH RECONVEYANCES and RELEASES

~~TRUSTEES~~ AND TRUSTEES

→ WITH LENDERS ~~TO~~ ^{TO} FACILITATE THE TIMELY
COMPLETION OF RECONVEYANCES.

→ INFORMATION FOR ANY MARKETING OR
OTHER PURPOSE

\$5.00 reconveyance preparation (trustee only) where Old Republic Title instructs PCD to prepare trustee file where Old Republic Title is trustee Initial here for service _____

Payment Terms:

Client shall collect post-closing fee at closing and forward check to PCD. PCD will provide client with a monthly report of services.

IN EFFECT UPON THE EFFECTIVE CANCELLATION

This agreement shall be ~~in effect~~ for six months and shall renew automatically. Client can however, with 30 days written notice, discontinue agreement at anytime. If after discontinuing service client would like assistance from The Post Closing Department to continue the tracking and processing methods and procedures put in place by The Post Closing Department, client may request consultation.

Additional Terms and Conditions:

- PCD SHALL PROVIDE CLIENT WITH MONTHLY PROGRESS REPORTS OF RECONVEYANCE ACTIVITY ON EACH OF CLIENTS FILES BEING TRACKED AS WELL AS ON ALL

Old Republic Title, Ltd.

By: _____
Carleton R. Lago
Senior Vice President and Secretary
~~Old Republic Title~~

Date _____

Phone: 800-325-7711
Fax: 925-938-0404

The Post Closing Department

By: _____
Troy X. Kelley
President
The Post Closing Department
2521 Fremont Street
Tacoma, WA 98406
Phone: 888-210-2607 / Fax: 888-210-2613
Email: tkelley@propertyclose.com

Date _____

ALL ACCOUNTING

WE SHOULD INCLUDE LANGUAGE IN THIS AGREEMENT TO COVER THE REPORTING AND DISBURSEMENT OF FUNDS TO PCD REVENUE OF THE FUNDS TO THE PRINCIPALS IN OUR ESCROW THE ONDO'S

→ DATE, PCD WILL CEASE TO RECEIVE RECONVEYANCE#
PACKAGES FROM CLIENT BUT WILL RETAIN ALL FILES
RECEIVED UP TO CANCELLATION DATE and WILL
CONTINUE TO PROVIDE FULL SERVICE ON SUCH
FILES UNTIL IT IS DETERMINED THAT ALL
RECONVEYANCES HAVE BEEN COMPLETED.

→ FUNDS RECEIVED FROM CLIENT ^{THAT HAVE BEEN} ~~AND/OR~~
DISBURSED AND/OR REFUNDED
TO PRINCIPALS.

Exhibit C

Lisa Garcia

From: Troy Kelley [tkelley@propertyclose.com]

Sent: Monday, May 08, 2006 10:30 AM

To: Lisa Garcia

Subject: Re: Agreement For Post Closing Services - Old Republic Title, Ltd. et al.

Thank you.

Lisa Garcia <LGarcia@ortc.com> wrote:

Mr. Kelley:

Attached for your records is a fully executed copy of the above referenced Agreement.

<<Contract.pdf>>

Lisa Garcia

Corporate Admin.

Old Republic Title Company

2001 North Main Street, Suite 500

Walnut Creek, CA 94596

Ph. (925) 938-0300

Fax (925) 938-0404

lgarcia@ortc.com

5/8/2006

ORTK000159



TO: CARL LAGO
925-938-0404

FROM: TROY KELLEY

The Post Closing Department

3820 South Pine Street • Tacoma, WA 98409 • Ph: (888) 210-2607 • Fax: (888) 210-2613



**THE POST CLOSING DEPARTMENT
AGREEMENT FOR POST CLOSING SERVICES**

Client: Old Republic Title, Ltd. dba Old Republic Title and Escrow, Ltd. and Issaquah Escrow, Inc.

Description of Services:

The Post Closing Department (hereinafter known as PCD)

The PCD agrees to receive, track, prepare and obtain all reconveyances and satisfaction of mortgages from client's closed escrow and title files. PCD will follow-up in writing and on the telephone with outside trustees that have not recorded reconveyances within the time period mandated by state statutes. PCD agrees to assist client with all their post closing needs.

Client may begin to forward all "post closing documents" and phone calls concerning post closing to the post-closing desk/department. PCD will review all post closing documents for accuracy and correctness. If documents are incomplete or incorrect, PCD will correct and/or complete the document(s) within the parameters specified by client. "Post closing documents" shall mean by way of example but not limitation deed of full and partial reconveyances, releases of mortgages and instructions and/or transmittals executed by principals directing PCD to obtain such reconveyances and releases.

PCD shall complete all documents in a timely manner and in accordance with state statutes. And with the client's best interest in mind, PCD will always try to prepare and execute a substitution of trustee when said client is not listed as trustee on original recorded Deed of Trust. PCD shall also work diligently with lenders and trustees to facilitate the timely completion of reconveyances. PCD shall comply with all state statutes concerning post-closing material. PCD under no circumstances shall be required to bring legal action against any parties of interest.

Previous Services: Follow-up

If client has had a previous reconveyance service or outside vendor offering post-closing services, PCD shall audit previous years tracking and processing. If in the event PCD recovers money owed to client, client agrees to pay PCD 10% of recovered funds.

Optional: Initial here for service _____

PCD Privacy Notice

PCD agrees that it shall not collect, disseminate or release any information derived from client's escrow files and/or provided to its company or its employees to any third party or use said information for any marketing or other purpose unless in direct relationship to providing client with a completed reconveyance. PCD shall hold all information obtained from client in the strictest confidentiality and agrees to shred any documents collected or received from client's escrow files within one year of the completion of the reconveyances related to such files.

Start Date: June 1, 2006

Fees are as follows:

\$20.00 post closing tracking fee per item,

fee includes management of funds due trustees & client refunds

\$5.00 reconveyance preparation (trustee only) where Old Republic Title instructs PCD to prepare trustee file where Old Republic Title is trustee Initial here for service _____

Payment Terms:

Client shall collect post-closing fee at closing and forward check to PCD. PCD will provide client with a monthly report of services.

This agreement shall be in effect for six months and shall renew automatically. Client can however, with 30 days written notice, discontinue agreement at anytime. Upon the effective cancellation date, PCD will cease to receive reconveyance packages from client but will retain all files received up to cancellation date and will continue to provide full service on such files until it is determined that all reconveyances have been completed. If after discontinuing service client would like assistance from The Post Closing Department to continue the tracking and processing methods and procedures put in place by The Post Closing Department, client may request consultation.

Additional Terms and Conditions: _____

- PCD shall provide client with monthly progress reports of reconveyance activity on each of client's files being tracked as well as an accounting on all funds received from client that have been disbursed and/or refunded to principals.

Old Republic Title, Ltd.

By: _____

Carleton R. Lago
Senior Vice President and Secretary
2001 North Main Street, Suite 500
Walnut Creek, CA 94596
Phone: 800-325-7711
Fax: 925-938-0404

5/18/06
Date

The Post Closing Department

By: _____

Troy X. Kelley
President
2521 Fremont Street
Tacoma, WA 98406
Phone: 888-210-2607 / Fax: 888-210-2613
Email: tkelley@proptervclose.com

5-4-06
Date